

Exhibit 27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY BAFFO,

Plaintiff,

Index No.

10 Civ 1245

-against-

(LDW) (ETB)

NEW YORK INSTITUTE OF TECHNOLOGY;
ROBERT RIZZUTO, in his official and
individual capacities; and LEONARD
AUBREY, in his official and individual
capacities,

Defendants.

-----x

March 16, 2011

10:18 a.m.

Videotaped deposition of LEONARD
AUBREY, held at the offices of Thompson Wigdor &
Gilly LLP, 85 Fifth Avenue, New York, New York,
pursuant to Notice, before Lynne D. Metz, a
Shorthand Reporter and Notary Public of the State
of New York.

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1
2 APPEARANCES:
3
4 THOMPSON WIGDOR & GILLY LLP
5 Attorneys for Plaintiff
6 85 Fifth Avenue
7 New York, New York 10003
8 BY: GREGORY N. FILOSA, ESQ.,
9 of Counsel
10
11 FULBRIGHT & JAWORSKI L.L.P.
12 Attorneys for Defendants
13 666 Fifth Avenue
14 New York, New York 10103
15 BY: NEIL G. SPARBER, ESQ.,
16 of Counsel
17
18 ALSO PRESENT:
19 Anthony Baffo
20
21
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25

1
2 THE VIDEOGRAPHER: This is the video
3 operator speaking, Robert Calvert of
4 Veritext Reporting. Today's date is March
5 16, 2011. The time on the video monitor is
6 10:00 a.m. We are here at the offices of
7 Thompson Wigdor & Gilly located at 85 Fifth
8 Avenue New York, New York to take the
9 videotape deposition of Leonard Aubrey in
10 the matter of Anthony Baffo versus New York
11 Institute of Technology, Robert Rizzuto in
12 his official and individual capacity and
13 Leon Aubrey in his official and individual
14 capacity.
15 The venue of this case is United
16 States District Court for the Eastern
17 District of New York Index number is 10 Civ
18 1245(LDW)(ETB).
19 Will counsel please identify yourself
20 and state who you represent?
21 MR. FILOSA: Gregory Filosa with
22 Thompson Wigdor & Gilly representing the
23 plaintiff Anthony Baffo.
24 MR. SPARBER: Neil Sparber with the
25 firm of Fulbright & Jaworski representing

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1
2 IT IS HEREBY STIPULATED, by and between the
3 attorneys for the respective parties hereto, that:
4 All rights provided by the C.P.L.R., and Part 221
5 of the Uniform Rules for the Conduct of
6 Depositions, including the right to object to any
7 question, except as to form, or to move to strike
8 any testimony at this examination is reserved; and
9 in addition, the failure to object to any question
10 or to move to strike any testimony at this
11 examination shall not be a bar or waiver to make
12 such motion at, and is reserved to, the trial of
13 this action.
14
15 This deposition may be sworn to by the witness
16 being examined before a Notary Public other than
17 the Notary Public before whom this examination was
18 begun, but the failure to do so or to return the
19 original of this deposition to counsel, shall not
20 be deemed a waiver of the rights provided by Rule
21 3116 of the C.P.L.R. and shall be controlled
22 thereby.
23
24 The filing of the original of this deposition is
25 waived.

1
2 the defendants.
3 THE VIDEOGRAPHER: Will our court
4 reporter please swear in the witness.
5 LEONARD AUBREY,
6 called as a witness, having been first duly sworn
7 by the Notary Public (Lynne D. Metz), was
8 examined and testified as follows:
9 EXAMINATION BY
10 MR. FILOSA:
11 Q. Good morning, Mr. Aubrey. My name is
12 Greg Filosa. As you know we represent Mr. Baffo
13 in a lawsuit that he has pending in Federal Court
14 in the Eastern District of New York.
15 We have asked you to come down here
16 today to provide testimony and to answer a number
17 of questions that we have related to that lawsuit.
18 I just wanted to go over some general instructions
19 before we get started.
20 For the record, could you please state
21 your full name?
22 A. Leonard Anthony Aubrey.
23 Q. And your date of birth?
24 A. July 31, 1950.
25 Q. And what is your current address?

2 (Pages 2 to 5)

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1 L. Aubrey

2 Q. With the ultimate goal to improve
3 financial performance?

4 A. Yes.

5 Q. Both by cutting expenses and by
6 getting better qualified people in the positions?

7 A. Yes.

8 Q. Both of those could improve financial
9 performance; correct?

10 A. Absolutely, yes.

11 MR. FILOSA: Let's take a break now.
12 Five to ten minutes.

13 THE VIDEOGRAPHER: This marks the end
14 of tape number one. We are going off the
15 record and the time is 11:26.

16 (Recess taken.)

17 THE VIDEOGRAPHER: This marks the
18 beginning of tape number two. We are back
19 on the record and the time is 11:41.

20 BY MR. FILOSA:

21 Q. Now Mr. Aubrey, we were just talking
22 about the 2008 reorganization at the de Seversky
23 Center and we talked a little bit earlier today
24 about a management change, reorganization, however
25 you want to refer to it, that occurred in 2009

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1 L. Aubrey

2 that resulted in the elimination of the general
3 manager position.

4 I wanted to direct your attention
5 towards the 2009 reorganization and ask you a few
6 questions about that.

7 Do you recall when you first discussed
8 this topic, the 2009 reorganization with anyone?

9 A. Well, maybe the best way to answer
10 that question is because it has longer story is
11 that when we hired Anthony, I don't remember when,
12 Robert and I felt number one, it was in a sense a
13 stretch because Anthony had not had sort of as I
14 recall, extensive background in the position that
15 we were filling; okay, and with the necessary
16 requisite breadth of manager responsibilities on
17 the one hand. On the other hand, he was very
18 enthusiastic, had had a prior association with the
19 university and was someone who is very personable
20 and who we believe could ultimately succeed, at
21 the time we believed could ultimately succeed in
22 that position.

23 Around the 2008, 2009 period, I can't
24 remember the exact date, Robert and I had had
25 periodic discussions about obviously the financial

1 L. Aubrey

2 performance in general of de Seversky, but then
3 there were concerns around Anthony's performance
4 in particular. And Robert and I discussed
5 different things that we could do to try to help
6 him and perhaps including things like getting
7 training and so on, but there was an effort over
8 what I recall a fairly extended period to try and
9 improve his performance. Anthony was not a
10 particularly strong manager of people and
11 obviously, that's an important part of the job and
12 that I know was a concern that Robert had.

13 And so in an operation like that where
14 you oversee some low skilled, you know waiters and
15 so on and fairly -- like sometimes relative to pay
16 scales, modest pay and so on and high turnover,
17 you really have to be not just a good people
18 person but a good manager, and Anthony as it
19 turned out was not particularly strong there and
20 after some extended period of time didn't really
21 grow into that position.

22 So from my perspective that Anthony
23 was hired because we both hoped and expected that
24 he would grow into the position because he
25 demonstrated an enthusiasm for working at de

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1 L. Aubrey

2 Seversky and working with the university and that
3 we were hoping that his skills would improve over
4 time and that didn't happen to the extent that we
5 had expected and to the extent that's required to
6 successfully execute or carry out the
7 responsibilities of the position.

8 Now I can't remember the exact dates,
9 but it was over a fairly extended period of time,
10 longer than six months, maybe longer than a year
11 in which these conversations were held.

12 So now, so all of that led up to along
13 with all the various other changes and the
14 necessity to improve performance in management led
15 to the decision of the restructuring,
16 reorganization, whatever term you want to use, at
17 the top management levels of de Seversky.

18 Q. So -- but at some point the decision
19 was made to eliminate the general manager
20 position; correct?

21 A. That's correct.

22 Q. And do you recall -- I mean you gave
23 kind of a narrative six month to a year answer
24 covering that time period.

25 I am wondering at what point it became

18 (Pages 66 to 69)

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1 L. Aubrey
 2 -- the decision to eliminate the position became
 3 more crystalized as opposed to more nebulous as
 4 you characterized --
 5 A. Yeah --
 6 Q. -- and just let me finish my question,
 7 and I am wondering at what point in time it got to
 8 that point where there are specific conversations
 9 about eliminating the position not so much as what
 10 can we do for training and things like that, but
 11 eliminating the position?
 12 A. August, September of 2009.
 13 Q. And do you recall did this come up in
 14 conversations with Mr. Rizzuto?
 15 A. Yes, it did.
 16 Q. Was anyone else a part of these
 17 conversations?
 18 A. No, they weren't. Him and I had these
 19 conversations directly and exclusively just of two
 20 of us.
 21 Q. And what do you recall the specifics
 22 of these conversations being?
 23 A. Well, obviously there was recognition
 24 that Anthony had to leave and we had to
 25 restructure the leadership of the organization.

1 L. Aubrey
 2 management and the leadership is immeasurably
 3 linked to the financial performance of the
 4 organization.
 5 So it is, especially in service
 6 organization you can't separate them as easily as
 7 you might in some other type of operation.
 8 Q. Now you also talked about Mr. Baffo's
 9 work performance, management style, management
 10 skills and things like that.
 11 Now did you ever have the opportunity
 12 to personally observe his work performance or were
 13 you in the de Seversky Center at any point to
 14 observe his work performance?
 15 A. Well, his work performance is
 16 reflected in the quality of the service and so on
 17 which around that time had a number of
 18 deficiencies which were noted by others to me;
 19 okay.
 20 Q. How were you defining quality of
 21 service then?
 22 A. Well, about you know, the skills of
 23 the wait staff for example, and the management of
 24 the dining room to have things properly organized
 25 and scheduled. This is principally from someone

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1 L. Aubrey
 2 That was specific.
 3 Then the second major point was well
 4 how do we do it in a way that's cost effective,
 5 meaning that we can reallocate some resources to
 6 other parts of the organization and effectively
 7 manage, effectively manage the facility.
 8 Q. So is it your testimony that the
 9 decision to eliminate the position was primarily
 10 performance based?
 11 A. No, no, not primarily performance
 12 based. It was -- I will say it as fairly as I
 13 can, it was equally performance and financial.
 14 Q. But what you had talked about was
 15 eliminating the position and in talking about that
 16 you described a number of performance management
 17 considerations and then what you said was the
 18 decision then became how to do it in the most cost
 19 effective way.
 20 That seems to be where the financial
 21 issues came into play; is that fair to say?
 22 A. No. As I have said many times during
 23 the course of this testimony is the financial
 24 performance of the organization was, is and always
 25 was critical; okay and that the quality of the

1 L. Aubrey
 2 who is an observer who is not necessarily, I am
 3 not a restaurateur nor someone who is a catering
 4 expert, but someone thinking it from the
 5 perspective of a customer.
 6 Q. And you said the quality of service
 7 was noted by others?
 8 A. Mm-hmm.
 9 Q. Who specifically had noted it to you?
 10 A. You know this is general
 11 conversations. I can't go through the whole list.
 12 Q. Do you recall discussing it with
 13 anyone other than Mr. Rizzuto?
 14 A. The quality of the service question?
 15 Q. You were talking about the quality of
 16 the wait staff and things of that nature.
 17 A. Yes.
 18 Q. So that wasn't limited to just
 19 conversations with Mr. Rizzuto?
 20 A. It was not.
 21 Q. And do you recall anyone else that you
 22 discussed this with?
 23 A. No.
 24 Q. But your testimony is that you did
 25 discuss it with others?

19 (Pages 70 to 73)

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1 L. Aubrey
 2 elimination of the general manager's position at
 3 de Seversky.
 4 Q. And it is dated October 16th -- strike
 5 that.
 6 It is signed by you; correct?
 7 A. That's correct.
 8 Q. And next to your signature is the
 9 date -- what's the date next to your signature?
 10 A. October 16, 2009.
 11 Q. And the memorandum is dated October
 12 16, 2008?
 13 A. That's correct.
 14 Q. Do you have any understanding as to
 15 whether or not this was -- strike that.
 16 Is the October 16, 2008 date a typo or
 17 incorrect, is that your understanding?
 18 A. No. It is not just my understanding.
 19 It is incorrect.
 20 Q. So was this the -- the decision to
 21 eliminate the position, the general manager
 22 position at the de Seversky Center was made in or
 23 about October 16, 2009; is that fair to say?
 24 A. Yes. It was made prior to then.
 25 Sometime prior to the 16th obviously because we

1 L. Aubrey
 2 A. The decision was made prior to that.
 3 Q. And when -- and how soon or how long
 4 prior to you signing this was the decision made?
 5 A. I don't recall.
 6 Q. Do you know if it was days?
 7 A. I don't recall. It would be unfair of
 8 me to even speculate now.
 9 Q. Do you know if it was weeks?
 10 A. It could have been, but I don't know.
 11 Q. And do you know who drafted this?
 12 A. Robert.
 13 Q. He drafted this and provided it to you
 14 for your signature?
 15 A. That's correct.
 16 Q. Did you ask him to put something in
 17 writing for you to sign?
 18 A. As a general procedure he would do so.
 19 Whether I asked him for this or not I don't
 20 precisely remember.
 21 Q. And I just wanted to go through the
 22 memo real quick. The first line says: "As a
 23 followup to our discussion with regards to
 24 reorganization of the management staff at the de
 25 Seversky Center."

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1 L. Aubrey
 2 had had discussions.
 3 Q. But it wasn't effective until you
 4 signed off on this; correct?
 5 A. Yes. We had an agreement on what
 6 action to take, yes.
 7 Q. And at what point -- you said the
 8 decision was made prior to this.
 9 When was the decision made?
 10 A. I don't know. It was obviously made
 11 sometime prior.
 12 Q. Do you know how soon prior to this?
 13 A. As I indicated earlier, we had been
 14 having conversations about this since late August
 15 or so, since sometime in August.
 16 Q. I understand that's your testimony.
 17 But my question is: When was the
 18 decision made? You had conversations about things
 19 and a decision is not necessarily made. What I am
 20 trying to understand is when the decision was made
 21 to eliminate the position. At some point in time
 22 there has got to be a decision being made.
 23 Is it on this date October 16, 2009
 24 when you signed it or is it your testimony that
 25 the decision was made prior to that?

1 L. Aubrey
 2 That's a reference to those
 3 discussions you've already talked about at length?
 4 A. Yes.
 5 Q. And then it goes on: "I would like to
 6 move forward and eliminate the position during the
 7 week of October 19, 2009."
 8 Do you see that?
 9 A. Yes, I do.
 10 Q. Do you have any understanding as to
 11 what Mr. Rizzuto means by the phrase moving
 12 forward?
 13 A. That means to eliminate the position
 14 and terminate Anthony.
 15 Q. So this is when the -- is this when
 16 the decision was actually made? I am trying to
 17 understand if the decision was already made, why
 18 would he say move forward and eliminate the
 19 position?
 20 A. I don't understand your question.
 21 Q. I mean it appears here he uses the
 22 language move forward. So it is being elevated at
 23 some point from where it was prior to this to the
 24 point that it is with this with you signing off on
 25 this.

23 (Pages 86 to 89)

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1 L. Aubrey
 2 So the decision hadn't been approved
 3 prior to you signing off on this; is that correct?
 4 A. In a formal way that's correct. It
 5 may have been agreed to, not may have, it was
 6 agreed to prior to then, but as I said earlier, I
 7 can't recall precisely when.
 8 Q. Now was there any discussion about the
 9 timing of eliminating the position?
 10 A. I am sure there was. The week of the
 11 19th obviously, that was the -- that was -- that
 12 was -- whether it occurred on Monday or a Thursday
 13 is something that would have to be fit into the
 14 schedules and the particulars of the situation.
 15 Q. What I am wondering though is whether
 16 or not there was any reason that it was the week
 17 of the 19th that the decision was made -- strike
 18 that.
 19 What I am wondering is why the week of
 20 the 19th was selected for eliminating the position
 21 from a timing standpoint?
 22 A. I can't think of anything that would
 23 be compelling other than that we had reached the
 24 point and were prepared to implement that in this
 25 particular action.

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1 L. Aubrey
 2 Presumably the 16th was a Friday and
 3 we had closed -- you know that closed the decision
 4 and then implementing those decisions is really
 5 within the province of Robert and the head of HR
 6 and everything that has to be done that's
 7 necessary to implement such a decision.
 8 Q. So there really wasn't any rhyme or
 9 reason as to why the 19th was selected other than
 10 it was after the formal decision had been made to
 11 eliminate the position?
 12 A. Well, once we make the decision you
 13 want to do it reasonably promptly.
 14 Q. Not other than that, there was no
 15 other reason that came in that you had discussed
 16 about the timing of it, just the decision had been
 17 made, it was formally signed off on on the 16th
 18 and the decision was made to move forward
 19 promptly?
 20 A. Mm-hmm.
 21 Q. Now going on to the second paragraph
 22 Mr. Rizzuto indicates -- and I assume when he says
 23 I, that's a reference to Mr. Rizzuto?
 24 A. Yes, it is.
 25 Q. And that's not referring to you?

1 L. Aubrey
 2 A. That's correct.
 3 Q. So it says: "I am forecasting flat
 4 revenues for fiscal 2010 and I have designed a
 5 plan to create three positions with the savings."
 6 Do you see that?
 7 A. That's correct.
 8 Q. Did you agree with Mr. Rizzuto's
 9 forecasting flat revenues for fiscal 2010?
 10 A. Well, since we start on September 1
 11 the fiscal year, this is relatively early in the
 12 fiscal year and of course Robert books ahead. So
 13 he has, you know a closer eye on what's happening
 14 since he knows what his bookings are going
 15 forward.
 16 This is around the period of course
 17 coming out of the difficult years that we had, you
 18 know since during the course of the recession. So
 19 very much during that period from the university
 20 as a whole, we were all very concerned about the
 21 economics, everything ranging from we didn't know
 22 how many students would come back to school
 23 because parents and so on lost employment. So
 24 this is in the general context of the university
 25 and him seeing a falloff or potential falloff on

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1 L. Aubrey
 2 what are many times discretionary expenditures.
 3 I am sure we had that conversation,
 4 but you know it was at best at that point in the
 5 fiscal year it was an estimate.
 6 Q. My question though is whether or not
 7 you agreed with his forecast of flat revenue
 8 for 2010?
 9 A. Yes, at that point I did.
 10 Q. And what was that based on?
 11 A. Just what I described about his
 12 bookings situation. What he saw happening in the
 13 environment in general and what I saw happening in
 14 the environment in general around our general
 15 business.
 16 Q. Did you do any independent research
 17 though into bookings that the de Seversky Center
 18 had for the remainder of 2009 and into 2010?
 19 A. No, I did not.
 20 Q. So your understanding of the
 21 forecasting of flat revenues was based on what Mr.
 22 Rizzuto had told you?
 23 A. That's correct.
 24 Q. And he told you that he was
 25 forecasting flat revenues and he cited all these

24 (Pages 90 to 93)

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1 L. Aubrey
2 overseeing the two people who were put in the sous
3 chefs role; okay. Those folks at some point prior
4 to this were given increased responsibilities and
5 Robert was overseeing their performance as well.

6 Q. And prior to this, had Mr. Baffo as
7 general manager supervised the kitchen staff as
8 you refer to them?

9 A. Yes. I can't remember now. I believe
10 the dining room food staff, the dining kitchen
11 staff reported to him but I don't remember that
12 exactly. Anthony is sitting next to you. He can
13 answer that.

14 Q. I apologize, but I am going to be
15 asking you the questions today. I won't be asking
16 any questions of Mr. Baffo.

17 A. Right.

18 Q. Now in conjunction with this
19 memorandum that Mr. Rizzuto provided, did he
20 provide any other paperwork, any business plan or
21 budget or revised work chart?

22 A. No.

23 Q. Did you ask him for anything?

24 A. No.

25 Q. Would you expect that he would have

1 L. Aubrey

2 MR. SPARBER: That's great.

3 THE VIDEOGRAPHER: This marks the end
4 of tape number 2. We are going off the
5 record and the time is 12:34.

6 (Time Noted: 12:34 p.m.)
7
8
9

10 LEONARD AUBREY

11
12 Subscribed and sworn to before me
13 this day of , 2011.
14
15

16 (Notary Public) My Commission Expires:
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1 L. Aubrey
2 provided any of that like he did for the 2008
3 reorganization?

4 A. No.

5 Q. And why not?

6 A. Because this has been a discussion
7 that had been going on for a very long time as I
8 referred to earlier; okay. This was the
9 consummation -- I am sorry, completion of a
10 discussion that had gone on for a very long time
11 and we both believed quite strongly that this was
12 the right thing to do.

13 Q. So you didn't ask him to put together
14 any business plan or organizational chart or
15 anything like that?

16 A. No, I did not.

17 MR. FILOSA: Before I get into
18 anything else this might be an appropriate
19 time. We have passed 12:30 which is when
20 you had to go. So if it's okay with you we
21 will conclude the deposition for today and
22 reconvene at a date and time that we agree
23 upon later.

24 (Continued on the next page.)
25

1
2 CERTIFICATE
3 STATE OF NEW YORK)

: ss.

4 COUNTY OF NEW YORK)

5 I, LYNNE D. METZ, a Shorthand Reporter
6 and a Notary Public within and for the State of
7 New York, do hereby certify that the foregoing
8 deposition of LEONARD AUBREY was taken before me
9 on the 16th day of March, 2011;

10 That the said witness was duly sworn
11 before the commencement of his testimony; that the
12 said testimony was taken stenographically by me
13 and then transcribed.

14 I further certify that I am not
15 related by blood or marriage to any of the parties
16 to this action or interested directly or
17 indirectly in the matter in controversy; nor am I
18 in the employ of any of the counsel in this
19 action.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 24th day of March, 2011.
22
23

24 LYNNE D. METZ
25

28 (Pages 106 to 109)

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